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April 8, 1995

ARE SECRECY OATHS A LICENSE TO LIE?

Between 1968 and 1971--just like Representative Robert G. Torricelli last month--I repeatedly broke a solemn, formal promise that I had earlier made in good faith. It was the same promise that Torricelli has acknowledged breaking: not to reveal to any "unauthorised persons" any information that I received through certain channels, or under certain safeguards ("classification").

I have never doubted that--in revealing the contents of the top secret Pentagon Papers on the Vietnam War to the Senate and the press--I did the right thing under the circumstances confronting me, even though it involved breaking the promises on secret-keeping I had made earlier to various government agencies and to the Rand Corporation.

It was the only way--I had considered many others, and tried most of them--to inform Congress and the American public of information that was still being wrongfully withheld from them. It was information that was vital to Constitutional processes of decision-making on an ongoing war in which tens of thousands of Americans, and many more Vietnamese, had been, in effect, lied to death.

That had occurred with the complicity of a generation of officials--myself among them--who had put fidelity to their secrecy oaths (and their bosses, and their careers) above their loyalty to the Constitution and to their opportunity, by exposing lies and telling the truth, to avert or end an unnecessary, wrongful, hopeless and vastly destructive war. By 1971 it was clear to me that it was my earlier behavior, keeping my promise to keep secrets from Congress and the public, that had been mistaken and censurable, not my later choice--like Torricelli's--to tell the truth.

Without yet knowing all the details of Representative Torricelli's behavior, beyond what he has been accused of and what he has acknowledged doing, I have little doubt that in revealing his information to the President and to the press he behaved rightly and deserves respect and thanks from his colleagues and the public.

Indeed, this seems almost self-evident under the circumstances as they have been reported. Yet at the same time it is claimed that under the rules of Congress and of his Intelligence Committee his condemnation and even his removal from the Committee is warranted. That contradiction should inspire a very critical look at the appropriateness of the prevailing interpretation of those rules. Profound issues of democracy are at stake.

In my judgment, the formal promise that Representative

Torricelli and I violated was one we should never have given, in the form it was presented and in the spirit in which it was meant to be understood. Nor should we have been asked to do so. I am sure that the particular agreements Rep. Torricelli signed or swore to had the same character, and defects, of those I repeatedly accepted.

I signed secrecy "oaths" (or contractual agreements, or undertakings) in many capacities over the years: as a U.S. Marine officer, on being employed by or renewing my contract with the Rand Corporation, as a consultant to the Office of Secretary of Defense, the State Department and the White House, and later as an employee of the Defense Department and the State Department. All of these were blanket promises never to reveal any information I received in those capacities that was marked or identified as safeguarded, "secret, classified," to any person who had not been authorized to receive it by the person or agency giving me the information.

What was implicit in my promise was: I will not reveal such information to such 'unauthorized' persons no matter what this information might be or reveal;

no matter whether it reveals evidence of official lies, crimes, planning for wars in violation of ratified treaties or the Constitution, plans to violate or past violations of laws of Congress;

no matter if the persons or agencies not authorized to receive it are officials of Congress or courts, who vitally need this information to discharge their Constitutional functions, or who are legitimately asking me to tell them the truth about it under oath;

no matter if an election or a Congressional investigation or vote deciding issues of war and peace might turn on whether voters or representatives are deceived by my silence or obedient lies about what their government has done or is contemplating;

no matter how many people have died and how many others might still die because this information is still being wrongfully withheld, by my colleagues and superiors, under a policy of secrecy and deception."

That is how I was meant to understand those promises. And for many years, that is how I acted, in keeping my promises of secrecy. Of course, these emphatic warnings were not spelled out explicitly in the papers I signed or in the accompanying briefings. If they had been, they would have given me a good deal of pause, to say the least. (That is why they are not spelled out, for prospective employees).

Would I have signed anyway? Probably so, in the beginning, which was in the mid- and late-Fifties. Government secrets had

been so well kept, by so many people before me, that as a young citizen I was unaware that I was ever likely to see such problematic information in the service of the U.S. Government. I would not have believed that the circumstances or conflicts suggested above were ever likely to arise.

On the other hand, I knew better within a year after I first signed such an agreement in 1958: a decade before I first copied secret information that had been wrongfully withheld and gave it to Congress and the press. Over that decade, it would have been harder and less likely for me to keep repeating such promises as I took new jobs, renewed contracts, or was offered new, higher clearances, if the obligation to keep silence about knowledge of crimes and lies had been formalised and explicit.

It would have been harder for me to conceal from myself that what I was being asked to sign was an agreement to participate and accept complicity--at least by keeping silent, and perhaps by actively misleading or lying, even committing perjury under oath--in major governmental conspiracies or grave obstructions of justice. It would have been obvious that an oath so stated or interpreted was in flagrant violation of my oath to uphold the Constitution and the laws of the United States, which was obviously superseding.

Neither I nor Representative Torricelli should ever have been asked to make such a promise: nor should any official, or representative, or citizen in a democracy. No officials in any agency, branch or level of government should be encouraged or obliged to make such a promise in this form or under this interpretation. Nor, of course, should they agree to make such a promise, if it is proposed.

Yet the fact is that millions of patriotic Americans do believe, in perfectly good conscience, that they have made just such a pledge (though usually without realising at first, all that it might entail). They see no Constitutional problem in their being asked to give such an assurance, so understood, as a condition of federal employment, or in their agreeing to give it. True popular sovereignty, in particular democratic control of foreign and military policy, is simply impossible to achieve if official behavior reflecting this understanding is widespread--as it is--and is not challenged as unacceptable.

The solution is not to make such an obligation-to-lie explicit in secrecy agreements (which may themselves be secret), but the opposite: to forbid agreements that encourage or permit such an interpretation. Every American should be made aware that an agreement or oath so interpreted is not only not legally or morally binding but that it is wholly improper. Nothing Americans can sign can give them a right to lie to Congress or courts, or for that

matter, to the electorate.

That does not mean that there cannot be obligations of discretion or even formal secrecy agreements in a wide variety of settings in a democratic republic. But if democratic government is to survive and to function in a meaningful sense--and like many other Americans, I have long felt it was worth giving my life, if necessary, to preserve that--those secrecy agreements must be understood to be provisional, subordinate to higher loyalties, laws and obligations, and limited by our existing Constitution and Bill of Rights.

Very simply, every secrecy agreement that anyone is asked to sign as a condition of employment or access to information in the setting of a democratic government with a rule of law should state explicitly:

"I understand that this agreement (oath, promise) in no way obliges, permits, or justifies my concealing evidence of criminal action or conspiracy or of deliberate deception of Congress, courts or the public. In particular, I understand that this agreement cannot and does not compel me or warrant me to give false testimony to Congress or courts, above all under oath."

Doesn't this go without saying? Isn't it already implicit in any oath a government official takes? Quite the contrary. As I have spelled out, it is the opposite interpretation that prevails. That is why Congress should legislate that the above understanding should appear explicitly in every contract and especially every secrecy agreement under government auspices.

If such a paragraph had been in plain print on the secrecy agreements that have been offered for signature to millions of Americans every year of the Cold War, I believe that there would be over fifty thousand names less on the Vietnam Wall. Tens of thousands fewer of nuclear warheads would have been produced (including in the Soviet Union, despite the secrecy which was indeed central to its form of government), even if the actual arsenals on both sides were still dangerously excessive. Over a hundred thousand lives might have been saved in Guatemala and the rest of Central America, And the U.S. would be far more secure today than it is from prospects of nuclear proliferation and terrorism.

That is not because no official would ever have lied to Congress or a court or the public, under orders or voluntarily, after signing an agreement with this explicit reservation. But they would not have lied or concealed the truth under the sincere impression that they were obliged to do so, by a promise they had made, or by loyalty to a boss or agency that outweighed loyalty to laws and the Constitution, or by their agency's interpretation of

the requirements of "national security."

They would not have felt entitled to give these justifications without embarrassment or apology--as former officials such as Richard Helms, Oliver North or Elliott Abrams have done, I believe in all sincerity--for consciously misleading Congress or courts in sworn testimony.

Under these circumstances I believe many officials--enough of them to have made a crucial difference--would have chosen not to mislead, conceal from or lie to Congress or courts, or the public, in these cases. And these catastrophic follies--whose preparation and persistence depended crucially, in a democracy, on deception--would have been averted. That would be reason to praise democracy, and to struggle to preserve the openness and accountability for truth-telling on which it depends.

One further addition to the secrecy oaths--to be mandated by legislation--would also serve these vital ends. Since they are signed so frequently and taken so seriously, there is no better place to remind government employees of their obligations as stated in the Ethics Act of 1958 [check wording and date]: "To put loyalty to the Constitution, the laws of the United States and to the highest moral values above loyalty to any person, agency or political party."